

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 3477

IN THE MATTER OF:

Served March 22, 1990

Application of D.A.Y. ENTERPRISES,)
INC., for a Certificate of Public)
Convenience and Necessity --)
Charter Operations)

Case No. AP-89-51

By application filed November 14, 1989, D.A.Y. Enterprises, Inc. (D.A.Y. or applicant), seeks a certificate of public convenience and necessity to transport passengers, together with baggage in the same vehicles as passengers, in charter operations between points in the Metropolitan District, except transportation solely within the Commonwealth of Virginia.

Pursuant to Order Nos. 3436 and 3438, served November 28 and December 4, 1989, respectively, a public hearing was held on January 18, 1990. One witness testified for applicant, and three public witnesses testified in support of the application. The application is uncontested.

SUMMARY OF EVIDENCE

D.A.Y. is a Virginia corporation. Its stock is owned by Mr. Emad Amin and his wife (25 percent); Mrs. Yranda, Mr. Amin's mother-in-law (25 percent); and Mr. Danny Dacumos, Mr. Amin's wife's uncle (50 percent). Mr. Amin is applicant's president. Mr. Amin's wife, Lucille Amin, is applicant's vice president and treasurer. D.A.Y. has no corporate secretary. Mr. Dacumos is D.A.Y.'s chairman of the board; there are no directors. Currently, Mr. Amin is applicant's sole full-time employee. D.A.Y. presently holds a certificate from the Interstate Commerce Commission authorizing the transportation of passengers, over irregular routes, in charter and special operations, between points in the United States east of the Mississippi River.

D.A.Y. currently conducts no transportation within the Metropolitan District. However, by Order No. 3449, served January 4, 1990, the Commission granted D.A.Y. temporary authority to transport passengers, together with baggage in the same vehicles as passengers, in charter operations between points in the Metropolitan District for the account of Thrifty Tours, Inc., restricted to transportation of passengers in vehicles with a manufacturer's designed seating capacity of 32 persons or less (including the driver). Upon accomplishing the appropriate insurance filing, D.A.Y. will begin operations in the Metropolitan District pursuant to temporary authority.

If this application is granted, Mr. Amin will be responsible for D.A.Y.'s day-to-day operations. He would handle D.A.Y.'s marketing; clean, maintain, and drive D.A.Y.'s vehicle; and book trips. Mr. Amin's wife would be employed part-time by D.A.Y. to handle the company's finances and answer telephone inquiries.

D.A.Y. proposes to initiate operations in the Metropolitan District using one 1987 25-passenger vehicle equipped with air conditioning, tinted side and overhead windows for sightseeing, AM/FM cassette system, public address system, mobile telephones, and separate cargo compartment. According to Mr. Amin, the vehicle is comfortable for passengers and is easy to drive and park in congested areas. The vehicle, which is owned jointly by Mr. Amin and his wife and leased to applicant, is garaged at Mr. Amin's house. Applicant is currently investigating the purchase of a 31-passenger mini-coach with luxury features (TV, VCR, separate seat for tour guide, separate P.A. system for tour guide, overhead baggage compartments, and luggage racks). In addition, the purchase of a full-size coach is contemplated.

Mr. Amin inspects D.A.Y.'s vehicle daily. Oil and other fluids are checked and changed if needed every two weeks. Every 7,000 miles the dealer checks all systems. Major repairs would be performed by the dealer, and the dealer would provide a back-up vehicle if necessary.

Mr. Amin would be D.A.Y.'s sole driver until additional vehicles are procured. With its application D.A.Y. submitted a balance sheet as of October 31, 1989, showing current assets of \$12,223, including \$7,889 cash, fixed assets ("operating equipment") of \$37,949 (without any allowance for depreciation), and other assets of \$1,002. D.A.Y.'s statement of financial condition lists current liabilities of \$1,358, long-term liabilities of \$19,766, and common stock of \$30,050. For the calendar year 1990, applicant projects income of \$128,000, including \$36,900 from WMATC operations, and expenses of \$114,357 resulting in "projected net income" of \$13,643 or an operating ratio of 89. Expenses are not allocated between WMATC operations and non-WMATC operations. However, Mr. Amin testified that D.A.Y.'s non-WMATC operations have been profitable to date.

D.A.Y.'s proposed tariff lists charter rates for the 25-passenger vehicle of \$40 an hour (March through October) and \$38 an hour (November through February); rates proposed for the 31-passenger vehicle are \$42.50 an hour (March through October) and \$40 an hour (November through February). A four-hour minimum would apply to the foregoing rates. In addition to hourly rates, D.A.Y. proposes a rate for transfers between any two points in the Metropolitan District of \$150 with an additional charge for boarding time in excess of 30 minutes. D.A.Y.'s tariff contains a provision applicable to special operations. If this application is granted, that provision will be deleted.

D.A.Y. intends to offer its services to all. However, Mr. Amin believes that D.A.Y. could offer special service to persons from the Middle East inasmuch as Mr. Amin speaks Arabic. An exhibit introduced by D.A.Y. indicated that the United States Department of Commerce

counted 17,727 tourists arriving in the United States from Egypt during the first nine months of 1989. During that same period 10,866 tourists arrived in Washington from the Middle East in general. Mr. Amin considers these persons to be potential customers of D.A.Y. If this application is successful, D.A.Y. would advertise through phone books, distribution of flyers, and direct sales calls.

Mr. Amin is familiar with the Compact and the Commission's rules and regulations, including its safety regulations, and intends to assure D.A.Y.'s compliance with them if this application is granted.

Ms. Jeanne Kimball Simpson, vice president of Thrifty Tours, Inc. (TTI), testified on its behalf in support of the application. TTI has been in business for 35 years. TTI is a "reception operator" specializing in group tours of the Washington area. As a member of the National Tour Association, TTI brings approximately 12,000 people a year to the Metropolitan District in groups ranging in size from 12 to 800. When a group approaches 25 in size, Ms. Simpson prefers a 25-passenger vehicle over a 21-passenger vehicle in order to take advantage of increased luggage space and additional luxury features. Most groups for which TTI arranges local transportation require full-size motor coaches (46-passenger vehicles and larger). Although a smaller portion of TTI's business requires "mini-coaches", mini-coach availability is important to TTI if it is to offer full service to its clients. In Ms. Simpson's experience the number of luxury mini-coaches available for charter in the Washington area is limited. TTI has required mini-coaches in the past and has not always been able to obtain such equipment. TTI needs mini-coach service between points in the District of Columbia and for transfers between the District of Columbia, on the one hand, and, on the other, the airports located within the Metropolitan District and for sightseeing in the Metropolitan District. TTI is least likely to need transportation involving Montgomery or Prince George's Counties, MD. However, it is to TTI's advantage to have a carrier licensed to transport passengers throughout the Metropolitan District in case future need arises. Last year TTI required transportation in mini-coaches between 12 and 20 times for multi-day jobs. Ms. Simpson anticipates an increase in demand for transportation in mini-coaches due to the growing number of international visitors to Washington. These visitors tend to travel in small groups. Ms. Simpson hopes TTI would obtain some of this work and, to this end, would promote use of a mini-coach. Ms. Simpson has seen D.A.Y.'s vehicle, and it is suitable for TTI's use. It has comfortable seats, a P.A. system, and ample luggage space. Ms. Simpson found the vehicle to be very clean and in good operating condition. TTI intends to use D.A.Y.'s service and believes such service is needed generally in the Metropolitan District.

Mr. Michael Johnson, bell captain for Westfields International Conference Center, testified on its behalf in support of the application. Westfields is a full service conference facility with the capacity to lodge 600 persons; it is located in Fairfax County, VA. The facilities has been open nine months, during which the occupancy rate has been high. Mr. Johnson's duties include arranging any transportation needed by Westfield's guests. Westfields' average charter group ranges in size from 20 to 25 persons. Transportation is

needed between three and four times a week between Westfields, on the one hand, and, on the other, points in the District of Columbia and Montgomery County, MD. Already, in the few months the conference center has been open, Mr. Johnson had been obliged to charter a full-size coach when he wanted a small (21- or 25-passenger) vehicle. The full-size coach cost more and failed to provide the congenial atmosphere of a mini-coach.

Mr. Osama Algundy, sales manager of Kitty Hawk Travel of Washington, DC, testified on its behalf in support of the application. Kitty Hawk has exclusive agreements with embassies of several Middle Eastern countries to arrange all travel needed by the embassies in connection with official visits to the United States. Mr. Algundy estimates that Kitty Hawk arranges ground transportation for between 26 and 32 groups each year. Most groups arrive on special flights at Andrews Air Force Base, Prince George's County, MD. A few groups come to the Metropolitan District on commercial flights landing at Washington National Airport or Washington Dulles International Airport. The groups require transportation throughout the Metropolitan District. If this application is granted, Kitty Hawk would use D.A.Y.'s service.

DISCUSSION AND CONCLUSIONS

This case is governed by Title II, Article XII, Section 4(b) of the Compact which provides:

. . . the Commission shall issue a certificate . . . if it finds, after hearing held upon reasonable notice, that the applicant is fit, willing and able to perform such transportation properly and to conform to the provisions of this Act and the rules, regulations, and requirements of the Commission thereunder, and that such transportation is or will be required by the public convenience and necessity; otherwise such application shall be denied.

Based on a thorough review of the record in this case, the Commission finds applicant fit, willing, and able to perform the proposed transportation properly.

D.A.Y. is a fledgling company. However, its single vehicle, driven and maintained by its single full-time employee, is new and in good condition. D.A.Y. has a preventive maintenance plan and has made provisions for garaging, repairing, and back-up of the vehicle. Taking official notice of Commission records, the Commission notes that the vehicle now is insured as required by Commission Regulation No. 62. Applicant's president has a fully-developed business plan addressing marketing strategy and acquisition of an additional vehicle (32-passenger). D.A.Y.'s finances appear sufficient to support the early stages of its operations. D.A.Y.'s president is familiar with relevant laws and regulations pertaining to these operations and intends to assure that applicant complies with them.

We turn now to the matter of whether applicant has satisfied its burden of proving that the public convenience and necessity require the proposed service. The Commission has relied on the test enunciated in Pan-American Bus Lines Operations (1 M.C.C. 190, 203 [1936]) when interpreting this provision of the Compact. The Pan-American test consists of three parts as follows:

. . . whether the new operation or service will serve a useful public purpose, responsive to a public demand or need; whether this purpose can and will be served as well by existing lines or carriers; and whether it can be served by applicant with the new operations or service proposed without endangering or impairing the operations of existing carriers contrary to the public interest.

Three public witnesses testified in support of D.A.Y.'s application. Each of those witnesses requires transportation in mini-coaches, such as proposed by D.A.Y. One witness requires such service exclusively for persons on official visits from various Arabic countries for whom D.A.Y. can offer specialized service. The record shows that applicant's proposed service is required throughout the Metropolitan District.

The evidence establishes that existing carriers are unable adequately to meet this need. This is not so much a result of poor service from existing carriers as the fact that there simply are not many 25-passenger vehicles currently available. For those requiring a luxury-type coach larger than a 15-passenger van but smaller than an intercity charter coach seating 47-passengers, the market simply does not provide many alternatives. Thus, it appears that D.A.Y. will offer a service which will enhance the availability of these vehicles and may even promote further use of vehicles of this size. Applicant presented no evidence of need for service in vehicles having a manufacturers seating capacity of over 32 persons. The authority granted herein shall therefore be restricted accordingly.

No carriers oppose this application, and the Commission finds that no demonstrable harm will result to any existing carrier from authorization of this proposed new service.

THEREFORE, IT IS ORDERED:

1. That D.A.Y. Enterprises, Inc., is conditionally granted, contingent upon timely compliance with the terms of this order, authority to transport passengers, together with baggage in the same vehicles as passengers, in charter operations between points in the Metropolitan District, except transportation solely within the Commonwealth of Virginia, restricted to transportation to vehicles having a manufacturer's designed seating capacity of 32 persons or less (including the driver).

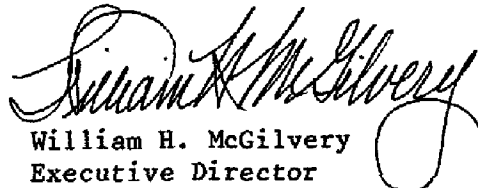
2. That in all other respects the application in Case No. AP-89-51 is denied.

3. That D.A.Y. Enterprises, Inc., is hereby directed within 30 days of the service date of this order to file with the Commission the following: (a) three copies of its WMATC Tariff No. 1 as proposed in the application, with all references to special operations deleted; (b) an equipment list indicating make, year, model, serial number, seating capacity, license plate number and jurisdiction for each vehicle to be used in revenue operations; (c) evidence of ownership or a lease in accordance with Commission Regulation No. 69 for each vehicle to be used in revenue operations; (d) a list of names, titles, and business addresses of all officers, directors, and shareholders of D.A.Y. Enterprises, Inc.; and (e) an affidavit of identification of vehicles pursuant to Commission Regulation No. 67 for which purpose WMATC No. 166 is hereby assigned.

4. That unless D.A.Y. Enterprises, Inc., complies with the requirements of the preceding paragraph within 30 days of the service date of this order, or such additional time as the Commission may direct or allow, the grant of authority contained herein shall be void, and the application shall stand denied in its entirety effective upon the expiration of the said compliance time.

5. That upon compliance with the conditions set forth in the preceding paragraphs, a certificate of public convenience and necessity will be issued to D.A.Y. Enterprises, Inc., in the form and as worded in the appendix to this order.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS WORTHY, SCHIFTER, AND SHANNON:


William H. McGilvery
Executive Director

NO. 166

D.A.Y. ENTERPRISES, INC.

By Order No. 3477 of the Washington Metropolitan Area Transit Commission issued March 22, 1990;

AFTER DUE INVESTIGATION, it appearing that the above named carrier is entitled to receive authority from this Commission to engage in the transportation of passengers within the Washington Metropolitan Area Transit District as a carrier, for the reasons and subject to the limitations set forth in Order No. 3477;

THEREFORE, IT IS ORDERED that the said carrier is hereby granted this certificate of public convenience and necessity as evidence of the authority of the holder thereof to engage in transportation as a carrier by motor vehicle; subject, however, to such terms, conditions, and limitations as are now, or may hereafter be, attached to the exercise of the privilege herein granted to the said carrier.

IT IS FURTHER ORDERED that the transportation service to be performed by the said carrier shall be as specified below:

IRREGULAR ROUTES

CHARTER OPERATIONS, transporting passengers, together with baggage in the same vehicles as passengers, between points in the Metropolitan District;

RESTRICTED to transportation in vehicles having a manufacturer's designed seating capacity of 32 passengers or less (including the driver), and FURTHER RESTRICTED against transportation solely within the Commonwealth of Virginia.

AND IT IS FURTHER ORDERED and made a condition of this certificate that the holder thereof shall render reasonable, continuous, and adequate service to the public in pursuance of the authority granted herein, and that failure to do so shall constitute sufficient grounds for suspension, change, or revocation of the certificate.